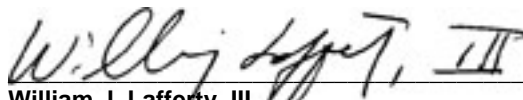




The following constitutes the order of the court.
Signed June 13, 2018


William J. Lafferty, III
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re)	
)	Case No. 17-42150
Leroy Fonteno,)	Chapter 13
)	
Debtor.)	Adv. Pro. No. 18-04066
)	
Jeanette Childs and Leroy Fonteno,)	
)	
Plaintiffs.)	
v.)	
)	
Wells Fargo Bank, et al,)	
)	
Defendants.)	

MEMORANDUM REGARDING VOLUNTARY DISMISSAL

On June 13, 2018, the Court held a hearing on multiple motions to dismiss filed by Defendants in this case. Prior to the hearing, on June 7, Plaintiff filed a *Notice of Voluntary Dismissal* ("the Notice") (doc. 18). Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 7041(a)(1)(A)(i), the Notice is sufficient to dismiss this adversary proceeding because no answer or motion for summary judgment has been filed. However, the Court writes this memorandum to clear up a point of possible confusion.

In the Notice, Plaintiff included the following language. "Accordingly, Plaintiff seeks dismissal of the entire adversary complaint *without prejudice* and without court order" (emphasis added). Whether the dismissal is with or without prejudice is an operation of law. FRBP

1 7041(a)(1)(B) states “if the Plaintiff previously dismissed any federal-or state-court action based
2 on or including the same claim, a notice of dismissal operates as an adjudication on the merits.”
3 Therefore, the effect of the Notice is to dismiss this case, with or without prejudice as the facts
4 may determine. However, it is not for this Court to say what the effect of the Notice will be on a
5 future action, and as this dismissal is without a Court order, there is no vehicle to make such a
6 determination even if the Court were inclined to do so. The Notice dismissed the case. Should
7 Plaintiff file the same claims in the future, a future competent court may be asked to determine
8 the preclusive effect of the Notice on the case before it.

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13 ***END OF MEMORANDUM***
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Court Service List

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